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10/591,117	08/30/2006	Jacques Thomasset	2590-164	7736
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NIXON & VANDERHYE, PC			KASHNIKOW, ERIK	
901 NORTH GLEBE ROAD, 11TH FLOOR			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/591,117	Applicant(s) THOMASSET ET AL.
	Examiner ERIK KASHNIKOW	Art Unit 1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 06 August 2010.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application
6) Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al (5,403,029).
3. In regards to claims 1, 2 and 5 Kawaguchi et al. teach a method for forming a composite by extrusion molding a resin material wherein the composite resin material comprises an outer synthetic layer and an inner synthetic layer enclosed therein, wherein the inner synthetic layer is the functional layer, such as a gas barrier layer (column 1 lines 7-9, 5 lines 63-64 and column 3 lines 28-31). Kawaguchi et al. teach that these are to be further used for compression molding (column 10 lines 60-67). Kawaguchi et al. teach an embodiment wherein there is an axis of revolution around said body (figures 8a-8d). Absent a showing of criticality with respect to "functional layer concentration" and "(Rmin-R0)/(Rmax-R0) ratio" (result effective variables), it would have been obvious to a person of ordinary skill in the art at the time of the invention to adjust the "concentration and ratio" through routine experimentation to values, including those presently claimed in order to achieve "an effective amount and positioning of barrier material". It has been held that discovering an optimum value of a

result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al. (US 5,403,529) in view of Kudert et al. (US 6,332, 767).

5. As stated above Kawaguchi and Akiyama et al. teach a molten "dose" prior to undergoing any compression molding wherein an internal layer is enveloped within the outer layer however they are silent regarding adhesive layers and the internal layer.

6. Kudert et al. teach articles wherein a functional layer is contained within an outer layer.

7. In regards to claim 3 and 4 Kudert et al. teach an embodiment wherein the functional layer is between two adhesive resins which would increase the functional layers affinity to said outer layer (column 27 lines 38 to column 28 line 19).

8. In regards to claim 6 Kudert et al. teach an embodiment wherein it is known to include folds in resin with in resin articles (Figures 6 and 7).

9. One of ordinary skill in the art at the time of the invention would have been motivated to modify the invention of Kawaguchi and Akiyama with that of Kudert because the invention of Kudert offers increased adhesion of the functional layer (column 28 lines 1-19).

10. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kawaguchi et al. (US 5,403,529) in view of Langecker (US 4,883,630).

11. As stated above Kawaguchi et al. teach an article made of one resin with 2 layers of a functional resin embedded within and varied distances between the inner layer and the axis of symmetry. However they are silent phase opposition shifts of the two layers.
12. Kawaguchi et al. teach that the layers are formed by the extrusion of the layers as well as a cutting step to form the dose (columns 8-10 as cited above).
13. Langecker teaches a method for the making of a mold article comprised of a thermoplastic resin (column 1 lines 5-20) including embodiments wherein one layer surrounds the next layer (column 3 lines 62-64).
14. In regards to claim 6 and 7 Langecker teaches that rate of flow of the plastics into the mold can be varied. Langecker teaches that the optimum material distribution is taking place while the changing of the flow rates is going on (column 3 lines 42-64), one of ordinary skill in the art would recognize that to keep the optimum material distribution when the flow of one material is decreased the other has to be increased to make up the difference. Langecker also teaches phase opposition in claim 1 where it is taught that the resins are only injected one at a time, therefore when one is at full flow, the other is at no flow, and in a phase opposition.
15. In regards to claim 8 Langecker teaches a method which involves the injecting of at least one functional layer and at least one structural layer at different times in order to encapsulate one of the resins. Langecker also teaches the varying of the volume of the mold in proportion to the resin injected (claim 1).
16. While Kawaguchi et al. and Langecker are silent regarding pairing the cutting step with the variation in flow, it would have been obvious to one of ordinary skill in the

art at the time of the invention to do this so that one obtains doses consistent in composition and interior design which would then lead to consistent articles made from said doses.

17. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the process of Kawaguchi et al. with the process of Langecker because the process of Kawaguchi et al. would benefit from the confidence provided by the process of Langecker that an exact material distribution in the mold cavity is ensured (column 2 lines 59-64).

Response to Arguments

18. In regards to Applicant's arguments regarding the inner layer of Kawaguchi, it is noted that the broadest possible interpretation of the term forms the shell of a body of revolution would be an outer portion/layer of body that rotates around the axis of symmetry, it is noted that the outer portion of layer 116 comprises a shell. It is noted that the claim does not state what is present within said shell. In this instance it is more of the functional layer. It is noted that not only this outer layer but the entire portion of resin forms a body of revolution around the axis of symmetry drawn through the horizontal axis of figure 9.

19. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was

within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

20. Examiner notes that while Langecker and Kudert do not disclose all the features of the present claimed invention, Langecker and Kudert are used as teaching reference, and therefore, it is not necessary for this secondary reference to contain all the features of the presently claimed invention, *In re Nievelt*, 482 F.2d 965, 179 USPQ 224, 226 (CCPA 1973), *In re Keller* 624 F.2d 413, 208 USPQ 871, 881 (CCPA 1981). Rather this reference teaches a certain concept, and in combination with the primary reference, discloses the presently claimed invention. If the secondary reference contained all the features of the present claimed invention, it would be identical to the present claimed invention, and there would be no need for secondary references. It is noted that while Applicants have argued that combining Kawaguchi with Kudert and Langecker would result in reconstruction and deconstruction of the Kawaguchi reference no arguments or evidence have been presented to support the declarations and such the rejections are upheld.

Conclusion

21. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIK KASHNIKOW whose telephone number is (571)270-3475. The examiner can normally be reached on Monday-Friday 7:30-5:00PM EST (Second Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Ruthkosky can be reached on (571) 272-1291. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mark Ruthkosky/
Supervisory Patent Examiner, Art Unit 1785

Erik Kashnikow
Examiner
Art Unit 1782